IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.981 of 2001.

Date of decision: 2.1.2007.

Raghunath Sharma **….Petitioner**

Versus

Union of India and Others. **….Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.Ajay Sharma, Advocate.**

For the Respondents: **Mr.Sandeep Sharma, Assistant Solicitor General of India.**

Dev Darshan Sud,J.

The petitioner has filed the present writ petition through his wife Smt.Aparjita Kumari on the allegations that he was serving as Naib Subedar(RT) with respondent No.3 in the Indian Army. He was on leave from 13.3.1995 to 12.5.1995, which was extended up to 22.5.1995. He left home telling his family members that he was going to meet his previous Commanding Officer. This was the last which was heard about the petitioner both by his family and the Unit in which he was serving. The wife of the petitioner, lodged a report (Annexure P-1) with the Police Station, Hamirpur being daily diary report No.20 of

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

25.5.1995, stating that her husband, (the petitioner herein), had gone missing and that his whereabouts were not known. By a communication dated 18th December, 1996, Annexure P-2, the wife of the petitioner was informed by the respondents that her husband had overstayed on leave w.e.f. 22nd May, 1995 and had been declared a deserter. The request for grant of family pension was declined by Annexure P-3 on the ground that the petitioner was a deserter. The other communications on the records show that the repeated pleas of the wife of the petitioner for assistance/allowance and grant of family pension etc. have been declined. It is alleged that the petitioner is suffering from Chronic Paranoid Schizophrenia. Medical Certificate, Annexure P-8, issued by the District Health Officer, Hamirpur, has been annexed with the petition to substantiate this fact. By a communication Annexure P-4, dated 14.2.2000, addressed to the Records, the Punjab Regiment, the respondents were informed that the petitioner has returned home and a request has been made that deserter roll may be cancelled as he is mentally upset. The wife of the petitioner states in this letter that the petitioner is unable to work and on hearing from the respondents she would escort him to the Regimental Centre. A Medical Certificate Annexure P-5 from one Dr.S.L. Singla, has been filed to show that the petitioner is mentally unfit. The case made out in the petition is

that the petitioner is suffering from mental disease and incapable of holding animus of deserting the army.

The respondents in their reply have annexed the apprehension roll, Annexure R-1, desertion declaration form, Annexure R-2, and Army Extract of Rule 113 of Pension Regulation governing personnel, Annexure R-3.

I have heard learned counsel for the parties. Learned counsel for the petitioner submits that the proceedings Annexure R-2 cannot be sustained as the mental condition of the petitioner is such that he is incapable of acting on his own. The present writ petition has been filed through his wife. Learned counsel for the petitioner has placed reliance on the judgments of this Court in ***Sunehru Devi*** *vs.* ***Union of India and others, Latest HLJ 2005(HP)(DB) 885, Smt.Kanta Devi*** *vs.* ***Union of India and others, 1998(2) Shim.L.C. 415*** and ***Smt.Sandhaya Devi Parmar vs. Union of India and others, 1997(2) Sim.L.C.310.***

The present petition is close to the facts in ***Smt.Kanta Devi's*** case. The documents on the record show that the respondents had been informed that the petitioner was not in a fit mental condition and for this purpose the medical record was also annexed. In these circumstances, the Army Authorities should have immediately taken action to ascertain the medical condition of the petitioner and provide assistance to the family of the petitioner. The communication

Annexure P-4 addressed by the wife of the petitioner to the respondents seeking their help in escorting the petitioner to the Regimental Centre and informing them that the petitioner is not in a fit mental condition, should have been considered by the respondents. In any event, it shows that the petitioner was incapable of forming any animus to desert the Army Unit. Merely stating that the petitioner is deserter is not the correct approach.

In the result, Annexure R-1 is quashed and set aside. The respondents are directed to consider the case of the petitioner for grant of family pension and other benefits in accordance with law.

January 4, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**